

NO. CAAP-16-0000005

IN THE INTERMEDIATE COURT OF APPEALS
OF THE STATE OF HAWAI'I

DWIGHT J. VICENTE, Claimant-Appellant,
v.
HILO MEDICAL INVESTORS, LTD., Employer-Appellee,
and
JOHN MULLEN & COMPANY, INC., Insurance Carrier-Appellee
APPEAL FROM THE LABOR AND INDUSTRIAL RELATIONS APPEALS BOARD
(AB 2015-259(H); DCD NO. 1-87-00882)

ORDER DISMISSING APPEAL FOR LACK OF APPELLATE JURISDICTION
(By: Foley, Presiding Judge, Leonard and Ginoza, JJ.)

Upon review of the record in CAAP-16-0000005 it appears that this court lacks appellate jurisdiction over the appeal. Claimant-Appellant Dwight J. Vicente (Appellant) purports to appeal from a "Motion for Reconsideration of Attorney's Fees Approval of the Director File Dated Aug. 19, 2015 and Appeals Board Order Denying Stay filed dated Dec. 24, 2015" in the Labor and Industrial Relations Appeals Board (LIRAB) case no. AB 2015-259(H).

Pursuant to Hawaii Revised Statutes (HRS) § 386-88¹ and HRS § 91-14(a), an aggrieved party may appeal a decision and order by the LIRAB directly to the Hawai'i Intermediate Court of Appeals.²

The appeal of a decision or order of the LIRAB is governed by HRS § 91-14(a), the statute authorizing appeals in administrative agency cases. HRS § 91-14(a) authorizes judicial review of a final decision and order in a contested case or a preliminary ruling of the nature that deferral of review pending entry of a subsequent final decision would deprive appellant of adequate relief. For purposes of HRS § 91-14(a), we have defined "final order" to mean an order ending the proceedings, leaving nothing further to be accomplished. . . . Consequently, an order is not final if the rights of a party involved remain undetermined or if the matter is retained for further action.

Bocalbos v. Kapiolani Medical Center for Women and Children, 89 Hawai'i 436, 439, 974 P.2d 1026, 1029 (1999) (citation and some internal quotation marks omitted; emphasis added). The Supreme Court of Hawai'i has "held that an order that finally adjudicates a benefit or penalty under the worker's compensation law is an appealable final order under HRS § 91-14(a), although other issues remain." Lindinha v. Hilo Coast Processing Co., 104 Hawai'i 164, 168, 86 P.3d 973, 977 (2004) (citation omitted) (emphasis added).

¹ "The decision or order of the appellate board shall be final and conclusive, except as provided in section 386-89, unless within thirty days after mailing of a certified copy of the decision or order, the director or any other party appeals to the intermediate appellate court, subject to chapter 602, by filing a written notice of appeal with the appellate board, or by electronically filing a notice of appeal in accordance with the Hawaii rules of appellate procedure." HRS § 386-88.

² HRS § 91-14(a) provides:

§ 91-14 **Judicial review of contested cases.** (a) Any person aggrieved by a final decision and order in a contested case or by a preliminary ruling of the nature that deferral of review pending entry of a subsequent final decision would deprive appellant of adequate relief is entitled to judicial review thereof under this chapter; but nothing in this section shall be deemed to prevent resort to other means of review, redress, relief, or trial de novo, including the right of trial by jury, provided by law. Notwithstanding any other provision of this chapter to the contrary, for the purposes of this section, the term "person aggrieved" shall include an agency that is a party to a contested case proceeding before that agency or another agency.

There is no final order by LIRAB that adjudicated any issues in Appellant's appeal from a June 3, 2015 Decision by the Director of the Department of Labor and Industrial Relations. The appeal to this court is premature and this court lacks appellate jurisdiction.

Therefore, IT IS HEREBY ORDERED that the appeal is dismissed for lack of appellate jurisdiction.

DATED: Honolulu, Hawai'i, May 19, 2016.

Presiding Judge

Associate Judge

Associate Judge